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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/530,803	06/12/2000	HERVE CROZIER	365-444P	3623

2292 7590 07/14/2004

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EXAMINER
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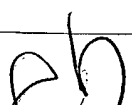
LEE, RIP A

ART UNIT	PAPER NUMBER
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1713

DATE MAILED: 07/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/530,803	CROZIER, HERVE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Rip A. Lee	1713	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on April 16, 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-15 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

This office action follows a supplemental response filed on April 16, 2004. Applicants have amended claims 1, 10, and 15. Claims 1-5 and 7-15 are pending. The present amendment contains claim 16, which apparently, is a typographical error.

#### ***Claim Objections***

1. Claim 16 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 1713

4. Claims 1-5 and 7-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,551,501 to Shiga *et al.* in view of U.S. Patent No. 4,670,491 to Stretanski *et al.* and/or U.S. Patent No. 4,192,794 to Wang *et al.*

Shiga *et al.* discloses a polymer composition comprising a blend of crystalline polypropylene and 0.05-10,000 ppm by weight of a vinyl cycloalkane (claim 1). Treatment of a Ti/Et<sub>3</sub>Al catalyst with vinyl cyclohexane for 15 minutes results in the formation of poly(vinyl cyclohexane) containing the active catalyst. In a subsequent step, propylene is polymerized in the presence of the catalyst modified with a polymer containing vinyl units, prepared previously (see Example 1). Thus, the method recited in parent claim 1 is taught in the prior art. The inventors contemplate the use of additives normally incorporated into polypropylene, such as carbon black and pigments (col. 3, line 50), however, no specific amount of pigment is disclosed.

One of ordinary skill in the art would not be at a loss in deciding the amount of pigment to use. He needs only turn to Stretanski *et al.*, which teaches polypropylene compositions containing 2.5 wt % titanium oxide as pigment (Table III), or Wang *et al.*, which reveals polypropylene resin pigmented with 5 wt % TiO<sub>2</sub> (Table 1). None of the references indicates that these amounts have detrimental effects on the polyolefin product. Therefore, it would have been obvious to one having ordinary skill in the art to use 2.5 wt %, or even 5 wt%, of TiO<sub>2</sub> pigment for imparting color to polypropylene resin, thereby arriving at the subject matter of present claims 1, 10 and 15. One having skill in the art would reasonably expect such a combination to work because it is taught in the prior art.

Art Unit: 1713

Present claims 4, 5, 7, 8, 9, 11, and 14 describe meaningful developments of the current invention. These elements are obvious in view of the prior art. For instance, Shiga *et al.* teaches the use of vinyl cycloalkanes selected from vinyl cyclopentane and vinyl cyclohexane (claim 8). It would have been obvious to use these materials because they are disclosed adequately in the prior art.

The reference is silent with respect to the particular properties recited in present claims 2, 3, and 12. However, a reasonable basis exists to believe that the prior art compositions would exhibit the same properties, especially in view of the fact that the prior art recites essentially the same composition. Since the PTO can not perform experiments, the burden is shifted to the Applicants to establish an unobviousness difference. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990).

Shiga *et al.* also use the composition for the manufacture of articles by the injection, extrusion, and blow molding techniques recited in present claim 12 (see col. 3, lines 60-63), and it would be obvious to one having skill in the art to use these molding techniques for making similar articles of manufacture. With respect to claims 3, intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See MPEP § 2111.02. There is no indication that the composition of the prior art can not be made into the claimed articles of manufacture. As such, the composition still meets the claims.

Art Unit: 1713

### ***Response to Arguments***

5. The rejection of claims 1-5 and 7-15 are under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,551,501 to Shiga *et al.* in view of U.S. Patent No. 5,684,099 to Watanabe *et al.* has been overcome by amendment.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Prior Art***

The prior art made of record but not relied upon is considered pertinent to the Applicant's disclosure. The following references have been cited to show the state of the art with respect to nucleated polypropylene compositions.

U.S. Patent No. 6,747,103 to Vestberg *et al.*

U.S. Patent No. 6,683,125 to Augestad *et al.*

U.S. Patent No. 6,503,993 to Huovinen *et al.*

U.S. Patent No. 6,437,063 to Karbasi *et al.*


Art Unit: 1713

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rip A. Lee whose telephone number is (571)272-1104. The examiner can be reached on Monday through Friday from 9:00 AM - 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu, can be reached at (571)272-1114. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<http://pair-direct.uspto.gov>>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

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July 9, 2004



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